

PATENT

Application # 10/563,187

Attorney Docket # 1043-005

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REMARKS

The Examiner is respectfully thanked for the consideration provided to this application. Reconsideration of this application is respectfully requested in light of the following remarks.

Claims 1-33 are now pending in this application. Each of claims 1, 14, and 15 are in independent form.

I. The Indefiniteness Rejections

Each of claims 1-33 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite. These rejections are respectfully traversed.

Regarding indefiniteness rejections, the Federal Circuit has held that the law is clear that **if the claims, read in light of the specification, reasonably apprise those skilled in the art of the use and scope of the invention**, and if the language is as precise as the subject matter permits, the claims are definite under Section 112, second paragraph. *Shatterproof Glass Corp. v. Libbey-Owens Ford Co.*, 758 F.2d 613, 624, 225 USPQ 634 (Fed. Cir. 1985), *cert. dismissed*, 474 U.S. 976 (1985).

The present Office Action asserts, at Page 1:

[t]hese claims recite conditional language "if without sufficiently providing one of ordinary skill instructions for proceeding in the event at least one of the "if conditions fail, i.e., the claims are silent regarding what will be done (as "the 'if not' occurs"), hence giving the claims their broadest reasonable interpretation, i.e., they have been examined as if "the 'if not occurs", and a reasonable alternative is ("do nothing", or perform the next steps).

Applicants respectfully submit that no evidence has been presented that any of claims 1-33, when "read in light of the specification," do not "reasonably apprise those skilled in the art of the use and scope of the invention." Thus, no *prima facie* case has been made that claims 1-33 are indefinite. Accordingly Applicants respectfully request reconsideration and withdrawal of the rejections of claims 1-33.

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Each of claims 1-33 was rejected under 35 U.S.C. § 103(a) as being unpatentable over various combinations of U.S. Patent No. 5,819,234 ("Slavin"), U.S. Patent No. 6,856,820 ("Kolls"), U.S. Patent No. 6,339,384 ("Valdes-Rodriguez"), U.S. Patent No. 7,044,622 ("Marshall"), and/or U.S. Patent No. 5,101,200 ("Swett"). Each of these rejections is respectfully traversed.

A. Legal Standards**1. *Prima Facie* Criteria for an Obviousness Rejection**

Over 40 years ago, in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), the Supreme Court established factors regarding the factual inquiry required to establish obviousness. The factors include:

1. determining the scope and contents of the prior art;
2. ascertaining differences between the prior art and the claims at issue;
3. resolving the level of ordinary skill in the pertinent art; and
4. considering objective evidence indicating obviousness or nonobviousness.

The Federal Circuit has applied *Graham*'s required factual inquiry in numerous legal precedents that are binding on the USPTO.

It is recognized that most patentable inventions arise from a combination of old elements and often, each element is found in the prior art. *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998). The United States Supreme Court clarified the obviousness inquiry criteria in *KSR International Co. v. Teleflex Inc.*, 2007 U.S. LEXIS 4745 (2007). The KSR Court held:

1. "[t]he question is not whether the combination was obvious to the patentee but whether the combination was obvious to a person with ordinary skill in the art";
2. "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art";

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3. it is necessary "to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit"; and
4. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" (*quoting In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006)).

In order to establish a *prima facie* case of obviousness, certain criteria must be met. Evidence must be provided that indicates that the combination was obvious to a person with ordinary skill in the art. *KSR International Co. v. Teleflex Inc.*, 2007 U.S. LEXIS 4745 (2007); *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The evidence must include an apparent reason, with a rational underpinning, to combine the known elements in the fashion claimed in the patent at issue. *KSR International Co. v. Teleflex Inc.*, 2007 U.S. LEXIS 4745 (2007). There must be a reasonable expectation of success. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP 2143. In addition, the prior art reference (or references when combined) must teach... all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP 2143.

Moreover, the "Patent Office has the initial duty of supplying the factual basis for its rejection." *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057, *reh'g denied*, 390 U.S. 1000 (1968). "It may not... resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis". *Id.*

It is legal error to "substitute[] supposed *per se* rules for the particularized inquiry required by section 103. It necessarily produces erroneous results." *See, In re Ochial*, 71 F.3d 1565, 1571, 37 USPQ2d 1127, 1132-33 (Fed. Cir. 1998); *In re Wright*, 343 F.2d 761, 769-770, 145 USPQ 182, 190 (CCPA 1965).

"Once the examiner... carries the burden of making out a *prima facie* case of unpatentability, 'the burden of coming forward with evidence or argument shifts to the applicant.'" *In re Alton*, 76 F.3d 1168, 37 USPQ2d 1578 (Fed. Cir. 1996) (*quoting In re Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444).

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A bald assertion of knowledge generally available to one of ordinary skill in the art to bridge the evidentiary gap is improper. Such unfounded assertions are not permissible substitutes for evidence. *See In re Lee*, 277 F.3d 1338, 1435, 61 USPQ2d 1430, 1435 (Fed. Cir. 2002). That is, deficiencies of the cited references can not be remedied by general conclusions about what is basic knowledge or common sense to one of ordinary skill in the art. *In re Zurko*, 258 F.3d 1379, 1385-86 (Fed. Cir. 2001).

3. Pertinent Prior Art References

The *Graham* analysis requires that, to rely on a prior art reference as a basis for a rejection, the USPTO must show that the reference is "reasonably pertinent to the particular problem with which the invention was involved." *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 664, 57 USPQ2d 1161, 1166 (Fed. Cir. 2000); *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1535, 218 USPQ 871, 876 (Fed. Cir. 1983); *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992); *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006).

"References are selected as being reasonably pertinent to the problem based on the judgment of a person having ordinary skill in the art." *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006) ("[I]t is necessary to consider 'the reality of the circumstances,'—in other words, common sense—in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor" (quoting *In re Wood*, 599 F.2d 1032, 1036 (C.C.P.A. 1979))).

"If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem, and that fact supports use of that reference in an obviousness rejection. An inventor may well have been motivated to consider the reference when making his invention. If it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it." *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006) (citing *In re Clay*, 966 F.2d 656, 659-60 (Fed. Cir. 1992)).

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Yet “[d]efining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness.” *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006) (quoting *Ecolocem, Inc. v. S. Cal. Edison Co.*, 227 F.3d 1361, 1372 (Fed. Cir. 2000)).

4. Evidence of Obviousness – Combination of References

Under the *Graham* analysis, the “examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.” MPEP 2142. The requirements for meeting this burden are clear.

To factually support a *prima facie* conclusion of obviousness, an Office Action must provide evidence that indicates that the combination was obvious to a person with ordinary skill in the art. The evidence must include an apparent reason, with a rational underpinning, to combine the known elements in the fashion claimed in the patent at issue. “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness” *KSR International Co. v. Teleflex Inc.*, 2007 U.S. LEXIS 4745 (2007) (quoting *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006)).

5. Reasonable Expectation of Success

“[I]f all the elements of [a claim] are found in a combination of prior art references”, “a proper analysis under § 103 requires, inter alia, consideration of ... whether the prior art would also have revealed that in so making or carrying out, those of ordinary skill would have a reasonable expectation of success” *Medichem, S.A. v. Rolabo, S.L.* (Fed. Cir. February 3, 2006) (quoting *Velander v. Garner*, 348 F.3d 1359, 1363 (Fed. Cir. 2003) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966))).

“[T]o have a reasonable expectation of success, one must be motivated to do more than merely to ‘vary all parameters or try each of numerous possible choices until one possibly arrived at a successful result, where the prior art gave either no indication of which parameters were critical or no direction as to which of many possible choices is likely to be successful.’” *Medichem, S.A. v. Rolabo, S.L.* (Fed. Cir. February 3, 2006) (quoting *In re O’Farrell*, 853 F.2d

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894, 903 (Fed. Cir. 1988)). "Similarly, prior art fails to provide the requisite 'reasonable expectation' of success where it teaches merely to pursue a 'general approach that seemed to be a promising field of experimentation, where the prior art gave only general guidance as to the particular form of the claimed invention or how to achieve it.'" *Id.*

6. Next Office Action

If an Office Action fails to set forth sufficient facts to provide a *prima facie* basis for the rejections, any future rejection based on the applied reference will necessarily be factually based on an entirely different portion of that reference, and thus will be legally defined as a "new grounds of rejection." Consequently, any Office Action containing such rejection can not properly be made final. *See In re Wiechert*, 152 USPQ 247, 251-52 (CCPA 1967) (defining "new ground of rejection" and requiring that "when a rejection is factually based on an entirely different portion of an existing reference the appellant should be afforded an opportunity to make a showing of unobviousness vis-a-vis such portion of the reference"), and *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967) (the USPTO "has the initial duty of supplying the factual basis for its rejection").

B. Analysis**1. Claim 1****a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Lack of Evidence of Obviousness

Applicant respectfully notes that the present Office Action fails to evidence the scope and contents of the prior art as required under *Graham*. The present Office Action fails to even identify what "the pertinent art" is. Moreover, the present Office Action fails to evidence the level of ordinary skill in the pertinent art.

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Applicant respectfully traverses the failure of the present Office Action to comply with the requirements of *Graham* and thereby, to provide a *prima facie* rejection under 35 U.S.C. 103. For at least these reasons, Applicant respectfully requests a reconsideration and withdrawal of the rejection of claim 1.

c. Evidence of Obviousness – Combination of References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Slavin, Kolls, Valdes-Rodriguez, and Marshall, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 1, in such a manner so as to arrive at the claimed subject matter of claim 1. Regarding the proffered combination of Slavin, Kolls, Valdes-Rodriguez, and Marshall, the present Office Action states, at Pages 2-4:

1. “it would have been obvious to an ordinary skill in the art at the time the invention was made to modify a method for transmitting a signal from a non-telephonic wireless transmitter/transponder as disclosed by Slavin et al. to include the aspect of a signal is from a *vehicle-powered* non-telephonic wireless transmitter/transponder, as suggested by Kolls et al. to utilize a secure, uninterrupted, long-lasting power connection to the vehicle's battery”;
2. “it would have been obvious to an ordinary skill in the art at the time the invention was made to modify a method for transmitting a signal from a *vehicle-powered* non-telephonic wireless transmitter/transponder as suggested by Slavin et al. in view of Kolls et al. to include the aspect of an *encrypted* unique identifier in the transmitted signal as taught by Valdes-Rodriguez to ensure secrecy of information or data during transmission”; and
3. “it would have been obvious to an ordinary skill in the art at the time the invention was made to modify a method for transmitting a signal from a *vehicle-powered* non-telephonic wireless transmitter/transponder as suggested by Slavin et al. in view of Kolls et al. further in view of Valdes-Rodriguez to

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include the aspect of the signal transmitted responsive to *‘a predetermined input from a user {claim 1}, wherein such an input comprises a predetermined number of headlight high beam switch activations within a predetermined time interval’ {claim 6}* as suggested by Marshall to activate a transmitter and get it ready to transmit signal/data to a receiver.”

Applicant respectfully submits that these unsupported assertions provide no evidence of, from the perspective of one of ordinary skill in the art, a “rational underpinning, to combine the known elements in the fashion claimed in the patent at issue”. Moreover, no evidence is presented that this unsupported assertion was “known in the prior art”, as required by *KSR*. Applicant reiterates that under *KSR* “rejections on obviousness grounds cannot be sustained by mere conclusory statements”. Thus, the Office Action fails to present the required evidence of obviousness.

d. Marshall is Not Pertinent Art to the Claimed Subject Matter

Marshall allegedly asserts, at the Abstract:

[a]n illumination tool for projecting a light beam through a transparent structure that has a portion of the tool detachably securable via a vacuum seal mechanism that engages the transparent structure. A lighting mechanism is electrically attached to the illumination tool and is positioned in contact with the transparent structure via a soft seal positioned about the lighting mechanism. The lighting mechanism may, if desired, be manually activated and deactivated i.e., the illumination tool turned on or off. If desired, the illumination tool may be remotely operated by a user depressing a remote operating switch and a radio signal is communicated to the illumination tool. The remote actuator may also be hardwire connected to the illumination tool. Further, if desired the lighting mechanism may be illuminated via strobe light, a continuous or flashing beam of light.

Thus, Marshall relates to an “illumination tool”.

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By contrast, claim 1 recites "receiving an approval from the central processor to complete the proposed transaction, the proposed transaction involving the valid financial account associated with the unique identifier."

One skilled in the art at the time of the invention would not have found an "illumination tool" to be in the same field of endeavor as "receiving an approval from the central processor to complete the proposed transaction, the proposed transaction involving the valid financial account associated with the unique identifier."

Likewise, one skilled would not find "illumination tool" to be "reasonably pertinent to the particular problem with which the inventor was involved" in "receiving an approval from the central processor to complete the proposed transaction, the proposed transaction involving the valid financial account associated with the unique identifier."

Further, because they are directed at vastly different problems, one of skill in the art would not consider Marshall to be pertinent art to that of Slavin, Kolls, and/or Valdes-Rodriguez.

Thus, Marshall is not pertinent to the present Application and is therefore not available as a reference for combination with Slavin, Kolls, and/or Valdes-Rodriguez.

e. Reasonable Expectation of Success

The Final Office Action attempts to, impermissibly, combine portions of Slavin, Kolls, Valdes-Rodriguez, and Marshall in rejecting the claimed subject matter.

Applicant respectfully reiterates that Marshall is allegedly directed to an "illumination tool".

By contrast, Slavin is allegedly directed toward an "automatic toll collection system." *See Abstract.*

In further contrast, Kolls' Abstract allegedly recites an "in-vehicle device data communicates with Internet based data processing resources for the purpose of transacting e-mail, e-commerce, and e-business."

Further, Valdes-Rodriguez allegedly states, at the Abstract, "device for automatically paying a toll for a vehicle passing through a toll booth."

The Final Office Action presents no evidence that one having ordinary skill in the art

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would have had any expectation of success, let alone a reasonable expectation of success, in combining the applied portions of the relied-upon references. At most, the applied portions of the relied-upon references provide "only general guidance as to the particular form of the claimed invention or how to achieve it."

Thus, even if there were proper evidence of obviousness presented by the Office Action (an assumption that is respectfully traversed), and even if the applied portions of the references relied upon in the Office Action, as attempted to be modified and/or combined by the Office Action, expressly or inherently teach or suggest every limitation of claim 1 (another assumption that is respectfully traversed), there is still no evidence indicating a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action, and consequently, the Office Action fails to establish a *prima facie* case of obviousness.

f. Conclusion

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 1. Applicant also respectfully requests a withdrawal of each of claims 2-13, each ultimately depending from claim 1.

2. Claim 2

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 2 in such a manner so as to arrive at the additional claimed subject matter of claim 2. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 2.

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None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 3 in such a manner so as to arrive at the additional claimed subject matter of claim 3. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 3.

4. Claim 4**a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitation

Claim 4 recites, inter alia, yet the applied portions of Slavin fail to teach, "providing an acknowledgment of fulfillment of the proposed transaction to the transmitter." Instead, the applied portion of Slavin allegedly recites, at col. 9 lines 59-63:

[d]epending on the result of the test at decisional block 200, the toll charge is approved and a green light 34 or the like is activated to indicate a valid toll charging transaction and to signal the motorist (or toll enforcement officials) accordingly.

Applicant respectfully submits that this applied portion of Slavin does not teach, "providing an acknowledgment of fulfillment of the proposed transaction to the transmitter."

The applied portions of the other applied references fail to cure at least these deficiencies

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of the applied portions of Slavin.

Thus, even if there were proper evidence of obviousness presented by the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Evidence of Obviousness – Combination of References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 4 in such a manner so as to arrive at the additional claimed subject matter of claim 4. Thus, the Office Action fails to present the required evidence of obviousness.

d. Conclusion

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 4.

5. Claim 5

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having

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ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 5 in such a manner so as to arrive at the additional claimed subject matter of claim 5. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 5.

6. Claim 7

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Slavin, Kolls, Valdes-Rodriguez, Marshall, and Swett, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 7, in such a manner so as to arrive at the claimed subject matter of claim 7. Regarding the proffered combination of Slavin, Kolls, Valdes-Rodriguez, Marshall, and Swett, the present Office Action states, at Page 8:

it would have been obvious to an ordinary skill in the art at the time the invention was made to modify a method for transmitting a signal from a vehicle-powered non-telephonic wireless transmitter/transponder as suggested by Slavin et al. in view of Kolls et al. in view of Valdes-Rodriguez and further in view of Marshall to include the aspect of '*requesting and receiving (i.e., inputting), respectively, a PIN from the user*' as suggested by Swett to confirm the user's identity to a system from which the user requesting approval of the proposed transaction.

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by

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mere conclusory statements". Thus, the Office Action fails to present the required **evidence** of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 7.

7. Claim 8

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Slavin, Kolls, Valdes-Rodriguez, Marshall, and Swett, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 8, in such a manner so as to arrive at the claimed subject matter of claim 8. Regarding the proffered combination of Slavin, Kolls, Valdes-Rodriguez, Marshall, and Swett, the present Office Action states, at Page 8:

it would have been obvious to an ordinary skill in the art at the time the invention was made to modify a method for transmitting a signal from a vehicle-powered non-telephonic wireless transmitter/transponder as suggested by Slavin et al. in view of Kolls et al. in view of Valdes-Rodriguez and further in view of Marshall to include the aspect of '*requesting and receiving (i.e., inputting), respectively, a PIN from the user*' as suggested by Swett to confirm the user's identity to a system from which the user requesting approval of the proposed transaction.

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements". Thus, the Office Action fails to present the required **evidence** of obviousness.

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For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 8.

8. Claim 9

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 9 in such a manner so as to arrive at the additional claimed subject matter of claim 9. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 9.

9. Claim 10

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 10 in such a manner so as to arrive at the additional claimed subject matter of claim 10. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 10.

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None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 11 in such a manner so as to arrive at the additional claimed subject matter of claim 11. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 11.

11. Claim 12

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 12 in such a manner so as to arrive at the additional claimed subject matter of claim 12. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 12.

12. Claim 13

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

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The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 13 in such a manner so as to arrive at the additional claimed subject matter of claim 13. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 13.

13. Claim 14**a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Lack of Evidence of Obviousness

Applicant respectfully notes that the present Office Action fails to evidence the scope and contents of the prior art as required under *Graham*. The present Office Action fails to even identify what "the pertinent art" is. Moreover, the present Office Action fails to evidence the level of ordinary skill in the pertinent art.

Applicant respectfully traverses the failure of the present Office Action to comply with the requirements of *Graham* and thereby, to provide a *prima facie* rejection under 35 U.S.C. 103. For at least these reasons, Applicant respectfully requests a reconsideration and withdrawal of the rejection of claim 14.

c. Evidence of Obviousness – Combination of References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Slavin, Kolls, Valdes-Rodriguez, and Marshall, no evidence is provided whatsoever regarding why one having ordinary skill in the art

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would combine the applied portions of the relied-upon references, that are used in rejecting claim 14, in such a manner so as to arrive at the claimed subject matter of claim 14. Regarding the proffered combination of Slavin, Kolls, Valdes-Rodriguez, and Marshall, the present Office Action states, at Pages 2-4:

1. "it would have been obvious to an ordinary skill in the art at the time the invention was made to modify a method for transmitting a signal from a non-telephonic wireless transmitter/transponder as disclosed by Slavin et al. to include the aspect of a signal is from a *vehicle-powered* non-telephonic wireless transmitter/transponder, as suggested by Kolls et al. to utilize a secure, uninterrupted, long-lasting power connection to the vehicle's battery";
2. "it would have been obvious to an ordinary skill in the art at the time the invention was made to modify a method for transmitting a signal from a *vehicle-powered* non-telephonic wireless transmitter/transponder as suggested by Slavin et al. in view of Kolls et al. to include the aspect of an *encrypted* unique identifier in the transmitted signal as taught by Valdes-Rodriguez to ensure secrecy of information or data during transmission"; and
3. "it would have been obvious to an ordinary skill in the art at the time the invention was made to modify a method for transmitting a signal from a *vehicle-powered* non-telephonic wireless transmitter/transponder as suggested by Slavin et al. in view of Kolls et al. further in view of Valdes-Rodriguez to include the aspect of the signal transmitted responsive to '*a predetermined input from a user* {claim 1}, *wherein such an input comprises a predetermined number of headlight high beam switch activations within a predetermined time interval*' {claim 6} as suggested by Marshall to activate a transmitter and get it ready to transmit signal/data to a receiver."

Applicant respectfully submits that these unsupported assertions provide no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by KSR.

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Applicant reiterates that under *KSR* “rejections on obviousness grounds cannot be sustained by mere conclusory statements”. Thus, the Office Action fails to present the required **evidence** of obviousness.

d. Marshall is Not Pertinent Art to the Claimed Subject Matter

Marshall allegedly asserts, at the Abstract:

[a]n illumination tool for projecting a light beam through a transparent structure that has a portion of the tool detachably securable via a vacuum seal mechanism that engages the transparent structure. A lighting mechanism is electrically attached to the illumination tool and is positioned in contact with the transparent structure via a soft seal positioned about the lighting mechanism. The lighting mechanism may, if desired, be manually activated and deactivated i.e., the illumination tool turned on or off. If desired, the illumination tool may be remotely operated by a user depressing a remote operating switch and a radio signal is communicated to the illumination tool. The remote actuator may also be hardwire connected to the illumination tool. Further, if desired the lighting mechanism may be illuminated via strobe light, a continuous or flashing beam of light.

Thus, Marshall relates to an “illumination tool”.

By contrast, claim 14 recites “an approval processor adapted to receive an approval from the central processor to complete the proposed transaction, the proposed transaction involving the valid financial account associated with the unique identifier.”

One skilled in the art at the time of the invention would not have found an “illumination tool” to be in the same field of endeavor as “receiving an approval from the central processor to complete the proposed transaction, the proposed transaction involving the valid financial account associated with the unique identifier.”

Likewise, one skilled would not find “illumination tool” to be “reasonably pertinent to the particular problem with which the inventor was involved” in “receiving an approval from the

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central processor to complete the proposed transaction, the proposed transaction involving the valid financial account associated with the unique identifier.”

Further, because they are directed at vastly different problems, one of skill in the art would not consider Marshall to be pertinent art to that of Slavin, Kolls, and/or Valdes-Rodriguez.

Thus, Marshall is not pertinent art to the present Application and is therefore not available as a reference for combination with Slavin, Kolls, and/or Valdes-Rodriguez.

e. Reasonable Expectation of Success

The Final Office Action attempts to, impermissibly, combine portions of Slavin, Kolls, Valdes-Rodriguez, and Marshall in rejecting the claimed subject matter.

Applicant respectfully reiterates that Marshall is allegedly directed to an **“illumination tool”**.

By contrast, Slavin is allegedly directed toward an **“automatic toll collection system.”**
See Abstract.

In further contrast, Kolls’ Abstract allegedly recites an **“in-vehicle device data communicates with Internet based data processing resources** for the purpose of transacting e-mail, e-commerce, and e-business.”

Further, Valdes-Rodriguez allegedly states, at the Abstract, **“device for automatically paying a toll for a vehicle passing through a toll booth.”**

The Final Office Action presents no evidence that one having ordinary skill in the art would have had any expectation of success, let alone a reasonable expectation of success, in combining the applied portions of the relied-upon references. At most, the applied portions of the relied-upon references provide **“only general guidance as to the particular form of the claimed invention or how to achieve it.”**

Thus, even if there were proper evidence of obviousness presented by the Office Action (an assumption that is respectfully traversed), and even if the applied portions of the references relied upon in the Office Action, as attempted to be modified and/or combined by the Office Action, expressly or inherently teach or suggest every limitation of claim 14 (another assumption that is respectfully traversed), there is still no evidence indicating a reasonable expectation of

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success in combining or modifying the applied portions of the references relied upon in the Office Action, and consequently, the Office Action fails to establish a *prima facie* case of obviousness.

f. Conclusion

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 14.

14. Claim 15**a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Lack of Evidence of Obviousness

Applicant respectfully notes that the present Office Action fails to evidence the scope and contents of the prior art as required under *Graham*. The present Office Action fails to even identify what "the pertinent art" is. Moreover, the present Office Action fails to evidence the level of ordinary skill in the pertinent art.

Applicant respectfully traverses the failure of the present Office Action to comply with the requirements of *Graham* and thereby, to provide a *prima facie* rejection under 35 U.S.C. 103. For at least these reasons, Applicant respectfully requests a reconsideration and withdrawal of the rejection of claim 15.

c. Evidence of Obviousness – Combination of References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Slavin, Kolls, Valdes-Rodriguez, and Marshall, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 15, in such a manner so as to arrive at the claimed subject matter of claim 15. Regarding the

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proffered combination of Slavin, Kolls, Valdes-Rodriguez, and Marshall, the present Office Action states, at Pages 2-4:

1. "it would have been obvious to an ordinary skill in the art at the time the invention was made to modify a method for transmitting a signal from a non-telephonic wireless transmitter/transponder as disclosed by Slavin et al. to include the aspect of a signal is from a *vehicle-powered* non-telephonic wireless transmitter/transponder, as suggested by Kolls et al. to utilize a secure, uninterrupted, long-lasting power connection to the vehicle's battery";
2. "it would have been obvious to an ordinary skill in the art at the time the invention was made to modify a method for transmitting a signal from a *vehicle-powered* non-telephonic wireless transmitter/transponder as suggested by Slavin et al. in view of Kolls et al. to include the aspect of an *encrypted* unique identifier in the transmitted signal as taught by Valdes-Rodriguez to ensure secrecy of information or data during transmission"; and
3. "it would have been obvious to an ordinary skill in the art at the time the invention was made to modify a method for transmitting a signal from a *vehicle-powered* non-telephonic wireless transmitter/transponder as suggested by Slavin et al. in view of Kolls et al. further in view of Valdes-Rodriguez to include the aspect of the signal transmitted responsive to '*a predetermined input from a user {claim 1}, wherein such an input comprises a predetermined number of headlight high beam switch activations within a predetermined time interval*' {claim 6} as suggested by Marshall to activate a transmitter and get it ready to transmit signal/data to a receiver."

Applicant respectfully submits that none of these unsupported assertions provides any "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

1. "select the references";
2. "select the teachings of [the] separate references"; or

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3. "combine [those teachings] in the way that would produce the claimed" subject matter.

Thus, the Office Action fails to present the required **proof** of obviousness.

d. Marshall is Not Pertinent Art to the Claimed Subject Matter

Marshall allegedly asserts, at the Abstract:

[a]n illumination tool for projecting a light beam through a transparent structure that has a portion of the tool detachably securable via a vacuum seal mechanism that engages the transparent structure. A lighting mechanism is electrically attached to the illumination tool and is positioned in contact with the transparent structure via a soft seal positioned about the lighting mechanism. The lighting mechanism may, if desired, be manually activated and deactivated i.e., the illumination tool turned on or off. If desired, the illumination tool may be remotely operated by a user depressing a remote operating switch and a radio signal is communicated to the illumination tool. The remote actuator may also be hardwire connected to the illumination tool. Further, if desired the lighting mechanism may be illuminated via strobe light, a continuous or flashing beam of light.

Thus, Marshall relates to an "illumination tool".

By contrast, claim 15 recites "receiving information originating from a vehicle-powered non-telephonic wireless transmitter fixedly attached to a vehicle, the information comprising an encrypted unique identifier, the encrypted unique identifier not comprising a financial account number or a user-provided PIN, the information provided from the wireless transmitter responsive to a predetermined input from a user, the information requesting approval of a proposed transaction."

One skilled in the art at the time of the invention would not have found an "illumination tool" to be in the same field of endeavor as "receiving an approval from the central processor to complete the proposed transaction, the proposed transaction involving the valid financial account associated with the unique identifier."

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Likewise, one skilled would not find "illumination tool" to be "reasonably pertinent to the particular problem with which the inventor was involved" in "receiving an approval from the central processor to complete the proposed transaction, the proposed transaction involving the valid financial account associated with the unique identifier."

Further, because they are directed at vastly different problems, one of skill in the art would not consider Marshall to be pertinent art to that of Slavin, Kolls, and/or Valdes-Rodriguez.

Thus, Marshall is not pertinent art to the present Application and is therefore not available as a reference for combination with Slavin, Kolls, and/or Valdes-Rodriguez.

e. Reasonable Expectation of Success

The Final Office Action attempts to, impermissibly, combine portions of Slavin, Kolls, Valdes-Rodriguez, and Marshall in rejecting the claimed subject matter.

Applicant respectfully reiterates that Marshall is allegedly directed to an "illumination tool".

By contrast, Slavin is allegedly directed toward an "automatic toll collection system."
See Abstract.

In further contrast, Kolls' Abstract allegedly recites an "in-vehicle device data communicates with Internet based data processing resources for the purpose of transacting e-mail, e-commerce, and e-business."

Further, Valdes-Rodriguez allegedly states, at the Abstract, "device for automatically paying a toll for a vehicle passing through a toll booth."

The Final Office Action presents no evidence that one having ordinary skill in the art would have had any expectation of success, let alone a reasonable expectation of success, in combining the applied portions of the relied-upon references. At most, the applied portions of the relied-upon references provide "only general guidance as to the particular form of the claimed invention or how to achieve it."

Thus, even if there were proper evidence of obviousness presented by the Office Action (an assumption that is respectfully traversed), and even if the applied portions of the references relied upon in the Office Action, as attempted to be modified and/or combined by the Office

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Action, expressly or inherently teach or suggest every limitation of claim 15 (another assumption that is respectfully traversed), there is still no evidence indicating a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action, and consequently, the Office Action fails to establish a *prima facie* case of obviousness.

f. Conclusion

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 15. Applicant also respectfully requests a withdrawal of each of claims 16-33, each ultimately depending from claim 15.

15. Claim 16

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 16 in such a manner so as to arrive at the additional claimed subject matter of claim 16. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 16.

16. Claim 17

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-

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upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 17 in such a manner so as to arrive at the additional claimed subject matter of claim 17. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 17.

17. Claim 18

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 18 in such a manner so as to arrive at the additional claimed subject matter of claim 18. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 18.

18. Claim 19

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 19 in such a manner so as to arrive at the additional claimed subject

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matter of claim 19. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 19.

19. Claim 20

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 20 in such a manner so as to arrive at the additional claimed subject matter of claim 20. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 20.

20. Claim 21**a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitation

Claim 21 recites, inter alia, yet the applied portions of Slavin fail to teach, "transmitting a rejection of the proposed transaction if the proposed transaction exceeds a predetermined amount." Instead, the applied portion of Slavin allegedly recites, at col. 10, lines 5-13:

[i]f the toll plaza computer detects an invalid tag or a negative balance during an attempt to charge a toll amount, a red light 34 could be flashed or an alarm can be

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sounded as indicated by software block 206. Moreover, the video camera 37 which is normally operated at the toll plaza can be used to store images of the plate number and other vehicle data as indicated in block 208 and a violation enforcement procedure may be initiated (see block 210) when and if the toll plaza is equipped to do so.

Applicant respectfully asks, where does this applied portion of Slavin teach any “predetermined amount”? Applicant respectfully submits that this applied portion of Slavin does not teach, “transmitting a rejection of the proposed transaction **if the proposed transaction exceeds a predetermined amount.**”

The applied portions of the other applied references fail to cure-at least these deficiencies of the applied portions of Slavin.

Thus, even if there were proper evidence of obviousness presented by the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Evidence of Obviousness – Combination of References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 21 in such a manner so as to arrive at the additional claimed subject matter of claim 21. Thus, the Office Action fails to present the required evidence of obviousness.

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d. Conclusion

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 21.

21. Claim 22**a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitation

Claim 22 recites, inter alia, yet the applied portions of Slavin fail to teach, "transmitting a rejection of the proposed transaction if a total amount associated with one or more transactions exceeds a predetermined amount." Instead, the applied portion of Slavin allegedly recites, at col. 10, lines 5-13:

[i]f the toll plaza computer detects an invalid tag or a negative balance during an attempt to charge a toll amount, a red light 34 could be flashed or an alarm can be sounded as indicated by software block 206. Moreover, the video camera 37 which is normally operated at the toll plaza can be used to store images of the plate number and other vehicle data as indicated in block 208 and a violation enforcement procedure may be initiated (see block 210) when and if the toll plaza is equipped to do so.

Applicant respectfully asks, where does this applied portion of Slavin teach any "predetermined amount"? Applicant respectfully submits that this applied portion of Slavin does not teach, "transmitting a rejection of the proposed transaction if a total amount associated with one or more transactions exceeds a predetermined amount."

The applied portions of the other applied references fail to cure at least these deficiencies of the applied portions of Slavin.

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Thus, even if there were proper evidence of obviousness presented by the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Evidence of Obviousness – Combination of References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 22 in such a manner so as to arrive at the additional claimed subject matter of claim 22. Thus, the Office Action fails to present the required evidence of obviousness.

d. Conclusion

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 22.

22. Claim 23**a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

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b. Missing Claim Limitation

Claim 23 recites, inter alia, yet the applied portions of Slavin fail to teach, "transmitting a rejection of the proposed transaction **if the proposed transaction exceeds a predetermined amount for a predetermined counter-party.**" Instead, the applied portion of Slavin allegedly recites, at col. 10, lines 5-13:

[i]f the toll plaza computer detects an invalid tag or a **negative balance** during an attempt to charge a toll amount, a red light 34 could be flashed or an alarm can be sounded as indicated by software block 206. Moreover, the video camera 37 which is normally operated at the toll plaza can be used to store images of the plate number and other vehicle data as indicated in block 208 and a violation enforcement procedure may be initiated (see block 210) when and if the toll plaza is equipped to do so.

Applicant respectfully asks, where does this applied portion of Slavin teach any "predetermined amount"? Applicant respectfully submits that this applied portion of Slavin does not teach, "transmitting a rejection of the proposed transaction **if the proposed transaction exceeds a predetermined amount for a predetermined counter-party.**"

The applied portions of the other applied references fail to cure at least these deficiencies of the applied portions of Slavin.

Thus, even if there were proper evidence of obviousness presented by the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

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The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 23 in such a manner so as to arrive at the additional claimed subject matter of claim 23. Thus, the Office Action fails to present the required evidence of obviousness.

d. Conclusion

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 23.

23. Claim 24**a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitation

Claim 24 recites, inter alia, yet the applied portions of Slavin fail to teach, "transmitting a rejection of the proposed transaction if the proposed transaction exceeds a **predetermined amount for a predetermined time interval for a predetermined counter-party.**" Instead, the applied portion of Slavin allegedly recites, at col. 10, lines 5-13:

[i]f the toll plaza computer detects an invalid tag or a **negative balance** during an attempt to charge a toll amount, a red light 34 could be flashed or an alarm can be sounded as indicated by software block 206. Moreover, the video camera 37 which is normally operated at the toll plaza can be used to store images of the plate number and other vehicle data as indicated in block 208 and a violation

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enforcement procedure may be initiated (see block 210) when and if the toll plaza is equipped to do so.

Applicant respectfully asks, where does this applied portion of Slavin teach any “predetermined amount” or a “predetermined time interval”? Applicant respectfully submits that this applied portion of Slavin does not teach, “transmitting a rejection of the proposed transaction if the proposed transaction exceeds a **predetermined amount for a predetermined time interval for a predetermined counter-party.**”

The applied portions of the other applied references fail to cure at least these deficiencies of the applied portions of Slavin.

Thus, even if there were proper evidence of obviousness presented by the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Evidence of Obviousness – Combination of References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 24 in such a manner so as to arrive at the additional claimed subject matter of claim 24. Thus, the Office Action fails to present the required evidence of obviousness.

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For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 24.

24. Claim 25

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 25 in such a manner so as to arrive at the additional claimed subject matter of claim 25. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 25.

25. Claim 26

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 26 in such a manner so as to arrive at the additional claimed subject matter of claim 26. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 26.

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None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 27 in such a manner so as to arrive at the additional claimed subject matter of claim 27. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 27.

27. Claim 28

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 28 in such a manner so as to arrive at the additional claimed subject matter of claim 28. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 28.

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None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 29 in such a manner so as to arrive at the additional claimed subject matter of claim 29. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 29.

29. Claim 30

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 30 in such a manner so as to arrive at the additional claimed subject matter of claim 30. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 30.

30. Claim 31

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

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The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 31 in such a manner so as to arrive at the additional claimed subject matter of claim 31. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 31.

31. Claim 32

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 32 in such a manner so as to arrive at the additional claimed subject matter of claim 32. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 32.

32. Claim 33

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of the applied portions of the relied-upon references no evidence or reasoning is provided whatsoever regarding why one having

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ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 33 in such a manner so as to arrive at the additional claimed subject matter of claim 33. Thus, the Office Action fails to present the required evidence of obviousness.

For at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 33.

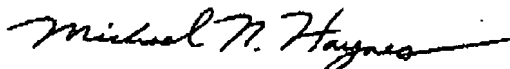
CONCLUSION

It is respectfully submitted that the application is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC



Michael N. Haynes
Registration No. 40,014

Date: 05 June 2007

1341 Huntersfield Close
Keswick, VA 22947
Telephone: 434-972-9988
Facsimile: 815-550-8850